

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Wyman Analyst: Darrine Distefano Bill Number: AB 2670
Related Bills: See Legislative History Telephone: 845-6458 Introduced Date: 02-22-2002
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Exemption/Income of California Residents Who Die While On Active Duty With the Armed Forces

SUMMARY

This bill would exempt a California resident who dies while on active duty with the Armed Forces from the income tax.

PURPOSE OF THE BILL

It appears the intent of this bill is to provide tax relief to families of active duty military members who die while serving their country.

EFFECTIVE/OPERATIVE DATE

This bill is a tax levy. Thus, it would be effective immediately, and apply to taxable years beginning on or after January 1, 2002.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Under federal and state laws, compensation received by a member of the Armed Forces is subject to income tax unless specifically excluded. Compensation received for any month while serving in a combat zone or qualified hazardous duty area is excludable. Qualified military benefits that are excludable from income include:

- benefits paid by the Veterans Administration, such as disability compensation, pensions, educational assistance, etc.;
- certain medical benefits, military disability benefits, and various travel allowances; and
- dislocation allowances, temporary lodging allowances, and move-in housing allowances provided for a permanent change of station.

Under current state and federal laws, a member of the Armed Forces of any country and the uniformed services of the United States may exclude from gross income amounts received as a pension, annuity, or similar allowance for personal injury or sickness resulting from active service.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Gerald H. Goldberg

04/12/02

Existing state law imposes tax on the income earned by individuals, estates, trusts, and certain business entities. Tax is imposed on the entire taxable income of residents of California and upon the taxable income of nonresidents derived from sources within California. The tax for individuals is computed on a graduated scale at rates ranging from 1% to 9.3%.

Under existing federal and state tax laws, if a member of the Armed Forces dies as a result of service in a combat zone or as a result of terroristic or military action outside the United States, income for the taxable year of death and, in many cases, at least one prior taxable year, is exempt from tax, regardless of the source of the income. The exemption from tax for death as a result of terroristic or military action also applies to civilian employees of the federal government. The Victims of Terrorism Tax Relief Act of 2001 extended this exemption to any individual who died as a result of the Oklahoma City bombing on April 19, 1995, the terrorist acts in New York City and at the Pentagon on September 11, 2001, or an attack involving anthrax on or after September 11, 2001, and before January 1, 2002.

THIS BILL

This bill would relieve a California resident who dies, regardless of the cause of death, while on active duty with any branch of the Armed Forces from any income tax obligations.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would occur during the department's normal annual update.

LEGISLATIVE HISTORY

AB 1626 (Stat. 1996, Ch. 723) conformed to the federal law that exempts from taxation all otherwise taxable income of: (a) active members of the Armed Forces who die while serving in a combat zone or as a result of wounds, disease, or injury incurred while serving in a combat zone; (b) certain individuals in missing status; and (c) military or civilian employees of the U.S. who die as a result of wounds or injury incurred outside the U.S. in terroristic or military action.

OTHER STATES' INFORMATION

Illinois and *Michigan* exempt from tax any military income received by a resident who is in the Armed Forces on active duty.

For active duty military residents of *Massachusetts*, *Minnesota*, and *New York*, the amount of military pay that is subject to federal income tax is subject to state tax.

None of these states have legislation similar to the provisions of this bill. These states conform to the federal law that exempts from tax the income of active duty military members who die in combat.

The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

Based on the information and assumptions discussed below, annual revenue losses from this bill are projected to be very minor, on the order of \$100,000 per year.

Revenue Discussion

The number of qualified taxpayers and their amount of tax would determine revenue losses otherwise due for that particular year.

According to the U.S. Statistical Abstract 2001, there were 1,003,000 active duty U.S. military personnel in 1999, of which 761 members died (regardless of cause). Based on the residency status, the U.S. Department of Defense recognizes 66 deaths as California residents. Their average state income tax due is assumed to be on the order of \$1,000 per individual per year. Taking into account the existing war on terrorism, annual revenue losses would likely not exceed \$100,000.

ARGUMENTS/POLICY CONCERNS

Limiting the exemption to California residents may raise constitutional issues. While certain geographic-related limitations are allowed without raising constitutional concerns, this bill may unconstitutionally discriminate against nonresidents with California source income and filing requirements.

LEGISLATIVE STAFF CONTACT

Darrine Distefano
Franchise Tax Board
845-6458

Brian Putler
Franchise Tax Board
845-6333